



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the  
Request for Opinion concerning  
the conduct of JOHN MODDRELL,  
FRANK REEVES, and GARY WILSON  
Members, Board of Directors  
McDermitt Sewer District  
Humboldt County, State of Nevada,  
Public Officers.

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Request for Opinion No.: 07-50C

#### EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

#### **INTRODUCTION, JURISDICTION, RELEVANT STATUTES AND OPINIONS (TAB A):**

##### **Introduction**

The following is the Executive Director's recommendation regarding just and sufficient cause based upon the Investigator's report.

John Moddrell (Moddrell) is chair of the Board of Directors (Board) of the McDermitt Sewer District (District). Frank Reeves (Reeves), Gary Wilson (Wilson), Dale Hartley (Hartley), and Lorraine Huttman (Huttman), secretary, are members of the Board. The Board was created under the authority of NRS 318.

Moddrell and Wilson are responsible for the day-to-day operational decisions. Huttman is responsible for records and minutes. All Board members have been elected, with the exception of Reeves, appointed in March 2006 to fill a vacancy.

The District has no written policies beyond a Humboldt County resolution creating the district in the 1960s. The District has no employees. Wilson and his wife, Patty Albisu, own and operate G & P Water Services that contracts with the McDermitt Community Board to provide accounting and maintenance services to the District. Wilson is also responsible for maintaining the sewer system.

Hartley submitted a Request for Opinion (Complaint) concerning the conduct of Moddrell, Reeves and Wilson on December 19, 2007. On January 3 and January 17, 2008 Hartley submitted additional information on the Complaint.

## **INTRODUCTION, JURISDICTION, RELEVANT STATUTES AND OPINIONS (CONTINUED)**

Moddrell, Reeves and Wilson submitted a Response and *Waivers of the Statutory Time Requirement* on January 27, 2008. On March 28, 2008, Humboldt County Chief Deputy District Attorney Theresa Wriston submitted a Response to the investigator's questions for additional information.

### **Jurisdiction**

In their capacity as members of the Board of Directors of the McDermitt Sewer District, Moddrell, Reeves and Wilson are public officers as defined by NRS 281A.160. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

The Commission must decide, however, whether it has jurisdiction over Moddrell's previous term for allegations on his 2004 conduct.

NRS 281A.280 states that "[t]he Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of this chapter by a public officer . . . in any proceeding commenced by the filing of a request for an opinion," and that these provisions apply "to a public officer who ***currently holds public office*** . . . at the commencement of proceedings against him." NRS 281A.280 states that these provisions also apply to a public officer who "resigns or otherwise leaves public office after the commencement of proceedings against him or ***within one year after the alleged violation or reasonable discovery of the alleged violation.***" (Emphasis added.)

Some of the allegations occurred during Moddrell's prior term. More than one year has lapsed since his prior term in office. Therefore, the Panel must decide if the Commission has jurisdiction to consider the alleged violations from 2004. Under the plain reading of NRS 281A.280, since Hardy currently holds public office, the Commission's jurisdiction extends to Moddrell's prior term.

The complaint also contains allegations of Open Meeting Law violations, harassment and retaliatory actions, use of unlicensed contractors, and other issues that do not fall within this Commission's jurisdiction. Therefore, these allegations will not be addressed in this report.

## **INTRODUCTION, JURISDICTION, RELEVANT STATUTES AND OPINIONS (CONTINUED)**

### **Relevant Statutes and Opinions**

NRS 281A.160 “Public officer” defined.<sup>1</sup>

NRS 281A.400 Code of Ethical Standards; General requirements . . .<sup>2</sup>

NRS 281A.420 Additional standards . . .<sup>3</sup>

### **REQUEST FOR OPINION (COMPLAINT) (TAB B):**

Moddrell, Reeves and Wilson allegedly used their positions to do favors for each other and other businesses in the community in order to circumvent fees, permits and other requirements. Moddrell allowed Reeves to construct and run sewer and water lines to his housing project without scheduling the matter for hearing before the Board or paying permit fees.

Moddrell allegedly gave special treatment to local businesses by not establishing commercial rates for construction projects and extension of sewer main lines. Moddrell allegedly withheld a 2004 report detailing the condition of the sewer system and failed to require a casino to install a grease interceptor.

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<sup>1</sup> **NRS 281A.160** 1. “Public officer” means a person elected . . . to a position which is established by . . . a statute of this State . . . which involves the exercise of a public power, trust or duty.

<sup>2</sup> **NRS 281A.400** A code of ethical standards is hereby established to govern the conduct of public officers . . . :

1. A public officer . . . shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
2. A public officer . . . shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:
  - (a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281A.420.
  - (b) “Unwarranted” means without justification or adequate reason.
4. A public officer . . . shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
5. If a public officer . . . acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.
6. A public officer . . . shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
7. A public officer . . . shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest.

<sup>3</sup> **NRS 281A.420** 8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

## **REQUEST FOR OPINION (CONTINUED)**

Reeves used his position to avoid the application and approval process for his housing development. Reeves used his position to avoid paying permit fees to construct the sewer and water lines to his housing development.

Wilson received concrete from the Reeves housing development to repair a sidewalk in front of a property owned by Wilson. Reeves project was inspected by Wilson, but Wilson is not a State licensed or certified inspector.

## **SUBJECTS' RESPONSE (TAB C):**

Moddrell, Reeves and Wilson respond that there have been no favors or any other unwarranted benefits between each other or any other business or person in the community. Reeves project required no hearing before the Board and no fees to be paid. The project had already been approved several years ago. A sewer rate schedule was adopted by the Board in April 2005. No one is receiving special treatment for sewer access. Rates for every type of land use, including commercial use, are listed in the schedule. The results of the 2004 report were discussed at the April and December 2004 Board meetings. Reeves donated the concrete to the McDermitt Community Board for repair of the community sidewalk located in front of Wilson's property. Since, Moddrell and Wilson are responsible for the day-to-day operations, it is appropriate for them to inspect sewer related projects. This activity also falls within Wilson's job description of sewer operator.

## **INVESTIGATOR'S ACTIVITIES (TAB D):**

- The investigator reviewed the Complaint and Response documentation and NRS 318. A request for additional information was sent to the Subjects on March 5, 2008.
- Hartley was interviewed and forwarded photographs of Reeves and Wilson reconstructing the sidewalk.
- Telephone conversations were conducted with County Administrator Bill Deist, Casino owner Todd Murrah, and County Planning Department staff. Deist confirmed that the County Planning Department administratively approves parcels, such as those belonging to Reeves, without a Planning Commission hearing. Murrah confirmed the notifications the Casino received from the Board regarding the requirement to install a grease interceptor.
- Obtained Board meeting Minutes for February 2, 2005, March 3, 2005, September 12, 2007, February 28, 2008, from the Board secretary
- Obtained Planning Department Reports on Reeves' project parcels, PH 07-44 and PH 07-73.
- Requested affidavit from Deputy District Attorney regarding the validity of the Planning Department Reports on PH 07-44 and PH 07-73 and affidavits from Moddrell and former Board chair, Jess Jaca, regarding previous approval of Reeves' housing project.

## **ANALYSIS AND RECOMMENDATION (TAB E):**

### **Moddrell**

Moddrell allegedly violated:

- NRS 281A.400.2 when he allowed Reeves to construct sewer and water lines for Reeves' housing development without Board approval.
- NRS 281A.400.2 when he used his position to benefit the Say When Casino (Casino) by not requiring the Casino to install a grease interceptor for its restaurant.
- NRS 281A.400.5 and 281A.400.6 when he withheld, for nearly one year, an inspection report on the Casino's restaurant regarding a recommendation that a grease interceptor be installed. Reeves worked at the Casino during that time.
- NRS 281A.400.2 when he gave special treatment to local businesses by not establishing commercial rates for sewer construction projects and extension of sewer main lines.

### **Reeves' housing development:**

Reeves' development plans for his subdivision were previously approved and recorded through the Planning Commission. No approvals were required from the Board or fees to be paid to the Board. According to Moddrell, Reeves' project would have been reviewed by the Planning Commission some time prior to 1979 and the Sewer Board would have reviewed it in 1985 when new sewer ponds were built. Reeves' project is the first sewer line extension to the system since the early 1970s. Because of the prior approvals, the District would not require the project to be placed on the agenda for review and approval.

Humboldt County Administrator Bill Deist (Deist) confirmed to the investigator that he recently told Moddrell that small parcels such as those owned by Reeves are administratively approved by Planning Commission staff. Documentation from the Humboldt County Regional Planning Department indicates that Reeves' project applications have a history dating back to 1975.

Deist also stated that it is common in small communities to have individuals serve in several capacities on many different boards. This would account for the level of involvement by Moddrell and Wilson visiting Reeves' construction site several times while work was done on both the water and sewer phases on the project.

### **Casino interceptor:**

The District sent a letter in November 2003 to the Casino requesting that it follow through with the construction of the grease-recycling trap. After the 2004 video inspection, the Sewer District instructed the Casino in February 2005 to establish a construction schedule for the installation of the grease interceptor. Casino part-owner Todd Murrah stated to the investigator that he remembered the notifications and the video inspection of the sewer system that took place in 2004. A grease interceptor has since been installed.

## **ANALYSIS AND RECOMMENDATION (CONTINUED)**

The information from the inspection report was not withheld from the Board. At its April and December 2004 meetings, an agenda item entitled “[r]eview of the results of the video inspection of the McDermitt Sewer Main Lines” is listed.

For these reasons it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegation that Moddrell violated **NRS 281A.400.5** and **281A.400.6** regarding whether he withheld an inspection report on the Casino’s restaurant regarding a recommendation that a grease interceptor be installed.

### **Special treatment to local businesses on sewer rates:**

A rate schedule for sewer usage was established by the Board May 2005. This rate schedule includes residential, camper court, trailer park/apartment, motel, government, and commercial properties and all properties in question. This schedule was listed as an action item on the March 3, 2005 Board meeting agenda.

Therefore it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegation that Moddrell violated **NRS 281A.400.2** regarding the installation of the sewer lines for Reeves’ housing development without Board approval, or to benefit the Casino, or give special treatment to local businesses.

### **Reeves**

Reeves allegedly violated:

- NRS 281A.400.2 when Reeves used his position to avoid the application and approval process for his housing development.
- NRS 281A.400.2 since Reeves may not have paid any permit fees to construct the sewer and water lines to his housing development.

### **Reeves’ housing development:**

Documentation from the Humboldt County Regional Planning Department indicates that Reeves’ project applications have a history dating back to 1975. The most recent applications indicate that a review and approval was given by the Planning Department October 2007.

Reeves’ housing development received administrative approval from the Planning Commission. The December 19, 2007 e-mail correspondence between Hartley and Planning Commission staff stated that Reeves was not required to go before the Planning Commission unless Reeves further subdivides his parcels.

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegation that Reeves violated **NRS 281A.400.2** regarding whether he used his position to avoid the application and approval process and avoid paying permit fees to construct the sewer and water lines for his housing development.

## **ANALYSIS AND RECOMMENDATION (CONTINUED)**

### **Wilson**

Wilson allegedly violated:

- NRS 281A.400.2 and 281A.400.4 when he received excess concrete from Reeves housing development on November 2, 2007 to repair a sidewalk in front of his rental property.
- NRS 281A.400.1, 281A.400.2 and 281A.400.7 when as the maintenance person for the water and sewer districts, he inspected Reeves construction site several times. Wilson has no license to inspect and is not a certified inspector.

### **Reeves' housing development:**

Moddrell and Wilson stated that they visited Reeves' construction site several times while work was done on both the water & sewer phases on the project. They commonly visit construction sites within the district to observe work being done to water and sewer systems.

The contract between G & P Water Services (Wilson) and the McDermitt Community Board indicates that Wilson has a "job description of Sewer operator" which includes, among other duties, "check the general condition of the system regularly" and "eliminate sewer stoppages or other problems that may be reported by customers or others."

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegation that Wilson violated **NRS 281A.400.1, 281A.400.2 and 281A.400.7** when he inspected Reeves' construction site several times, despite the fact that Wilson has no license to inspect and is not a certified inspector.

### **Sidewalk repair:**

In their response, the Public Officers state that Reeves donated the overage of concrete from his project to the McDermitt Community Board in order to repair a community sidewalk located in front of Wilson's rental property. The repair was required due to water main leak requiring the original sidewalk to be removed. Reeves paid for the concrete. Wilson did the physical work as a maintenance person for the McDermitt Community Board.

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegation that Wilson violated **NRS 281A.400.2 and 281A.400.4** when he received the excess concrete from Reeves' housing development on November 2, 2007 to repair a sidewalk in front of his rental property.

### **ANALYSIS AND RECOMMENDATION (CONTINUED)**

Expenditure to support or oppose ballot question for candidate:

A violation of NRS 281A.520 is also alleged in the Complaint. NRS 281A.520 states that a public officer . . . shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or a candidate in certain circumstances. However, there is no evidence presented in the Complaint that implicates this statute. It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegation that Moddrell, Reeves, or Wilson violated **NRS 281A.520**.

### **CONCLUSION (TAB F):**

There is no just and sufficient cause for the Commission to hold a hearing and render an opinion on any of the allegations against Moddrell, Reeves and Wilson. However, only the full Commission has the authority to determine if their conduct in relation to these issues rises to the level of a violation of state law.

### **REPORT PREPARED BY:**

Matt C. DiOrio DATED: 4-16-08  
MATT C. DI ORIO  
SENIOR INVESTIGATOR

### **APPROVAL AND RECOMMENDATION BY:**

Patricia D. Cafferata DATED: 4-16-08  
PATRICIA D. CAFFERATA, ESQ.  
EXECUTIVE DIRECTOR